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No. 04-660

Supreme Court, U.S.
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In The
Supreme Court of the United States

BEN. B. FLOYD, Trustee,

Petitioner,

v.

ASHLEIGH NICOLE LUCAS;
CRYSTAL ANNA LUCAS; BRANDY MARIE LUCAS;
STEPHEN WADE LUCAS, JR.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED BY PETITIONER FOR REVIEW BY THIS COURT

1. Whether an heir's power under state law to accept an inheritance and disclaim and channel it to a close family member constitutes "an interest in property" within the meaning of 11 U.S.C. §548, subjecting a disclaimer of the inheritance within one year of the bankruptcy to avoidance by a federal bankruptcy trustee.

2. Whether the state law doctrine of relation-back can modify a substantive federal statute.[1]

[1] The Petitioner has changed the issue(s) designated for this Court to consider from the issues submitted to the lower courts. Respondents will address this in their argument against Petitioner's request for this Court to grant a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

LIST OF PARTIES

When this adversary proceeding was filed in the bankruptcy court, Respondents, Ashleigh Nicole Lucas, a minor, was 16 years old, Crystal Anna Lucas, a minor, was 14 years old, Brandy Marie Lucas, a minor, was nine years old and Stephen Wade Lucas, Jr., a minor, was seven years old. Ms. Anna Marie Lucas is the children's conservator by order entered by Harris County Probate Court Three entered on October 21, 1996. Ben B. Floyd, trustee of the chapter 7 bankruptcy estate, is the Petitioner.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondents, Ashleigh Nicole Lucas, a minor, 16 years old, Crystal Anna Lucas, a minor, 14 years old, Brandy Marie Lucas, a minor nine years old and Stephen Wade Lucas, Jr., a minor, seven years old, respectfully request this Court to deny Ben B. Floyd's, a chapter 7 Trustee, Petition for Certiorari seeking review of the decision of the Fifth Circuit Court of Appeals.[2] For sake of clarity, the chapter 7 debtor, Anna Marie Lucas, will be referred to as the "Debtor." The Debtor is not a party to these proceedings.

STATEMENT OF THE CASE

This case is about whether federal tax case law, on the one hand, or state statutory and case law, on the other hand, determines a debtor's interest in property for the purpose of applying the fraudulent transfer provisions under 11 U.S.C. §548. A copy of the pertinent provisions of 11 U.S.C. §548 are attached as Appendix D to Petitioner's brief.

The Respondents agree with statements numbered 1 and the first paragraph of statement 2 as recited in their Statement of the Case.

On October 18, 1996, the Debtor executed a disclaimer under the Texas Probate Code, in which she disclaimed her interest in any inheritance under her mother's will

[2] The ages of the Respondents are stated as of the date that the Petitioner filed his adversary proceeding in the bankruptcy court.

that included significant liquid assets and real property located in Mineral County, Colorado (the "Colorado Property"). The Colorado Property is the only property that the Petitioner seeks to recover.

Under both Texas and Colorado law, the probate court statutorily allows a beneficiary under a will to disclaim or reject an inheritance. The Texas statute which is all but identical in nature to the Colorado statute provides that:

> A disclaimer evidenced as provided herein shall be effective as of the death of decedent and shall relate back for all purposes to the death of the decedent and is not subject to the claims of any creditor of the disclaimant. Unless the decedent's will provides otherwise, the property subject to the disclaimer shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent and a future interest that would otherwise take effect in possession or enjoyment after the termination of the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the decedent. Failure to comply with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent.

Texas Probate Code §37A

The bankruptcy court took all of the Petitioner's factual allegations as true. The district court found that the bankruptcy court considered other factual matters brought to its attention outside the motion to dismiss, thus treating the motion to dismiss as a motion for summary judgment and not simply a judgment on the pleadings.

When considered as a motion for summary judgment under Fed. R. Bankr. P. 7012(b), the Petitioner's "allegations" do not raise genuine issues as to *material* facts appeal, the required standard of review for matters treated as motions for summary judgments under Fed. R. Bankr. P. 7012(b). *Celotex vs. Catrett*, 477 U.S. 317 (1986); *Washington vs. Armstrong World Industries, Inc.*, 839 F.2d 1112, 1122 (5th Cir. 1988). The Debtor's intentions or the results of her actions when she recorded the disclaimer are not material. *See*, *Simpson vs. Penner*, 36 F.3d 450 (5th Cir. 1994). Accordingly, the Petitioner's "allegations" are, in reality, legal conclusions that should be disregarded and not presumed true by this Court to determine whether the court of appeals erred in affirming the bankruptcy court's order.

On July 22, 2003, the district court entered its own Order for Discovery requiring the parties to stipulate "how the devise to the children worked, whether through testamentary trust or guardianship" and "data on when, where and what [the Debtor] filed each time she submitted a document to a public authority to disclaim the land." On October 9, 2003, the Stipulation and Data Requested by the district court was filed. In it, the parties stipulated that on October 21, 1996, the Texas probate court appointed the Debtor the Respondents' Custodian under the Texas Uniform Transfers to Minors Act.

The Respondents disagree with the Petitioner's statement that this Court must consider the following alleged factual allegations as true:

> The Debtor recorded the Disclaimer with actual intent to hinder, delay, or defraud creditors. The Debtor recorded the Disclaimer without receiving a reasonably equivalent value in exchange, and

> the Debtor (a) was insolvent when the Disclaimer was recorded or became insolvent as a result of such Disclaimer, (b) was engaged or was about to engage in a business or transaction for which the Debtor's remaining property was unreasonably small capital, or (c) intended to incur or believed that the Debtor would incur, debts beyond the Debtor's ability to pay as they became due.

These particular allegations are merely a restatement of 11 U.S.C. §548(a), the crux of the issue on appeal, that is, did the disclaimer constitute a transfer of the Debtor's property under 11 U.S.C. §548.

Despite the Petitioner's reliance on *Shipp vs. McMahon*, 234 F.3d 907 (5th Cir. 2000), *cert. den'd*, 532 U.S. 1052 (2001), it is well established that legal conclusions or deductions framed as factual allegations do not benefit from the presumption of truthfulness under Fed. R. Civ. P. 12. *Papasan vs. Allain*, 478 U.S. 265, 286 (1986); *U.S. vs. Tulare Lake Canal Co.*, 535 F.2d 1093, 1097 (9th Cir. 1976), *cert. den'd*, 429 U.S. 1121 (1977).

Finally, the Appellant does not assert that the disclaimer was invalid, only that it was untimely.

REASONS FOR DENYING THE PETITION FOR WRIT

A. RULE 10 CONSIDERATIONS

1. **There is not a conflict among the circuit court of appeals**. Both courts were either decided on other grounds or reversed, respectively. See, *In re Kloubec*, 247 B.R. 246 (Bankr. N.D. IA. 2000), *aff'd*, 268 B.R. 173

(N.D. IA. 2001) and *In re Barjkovic*, 151 B.R. 402 (Bankr. W.D. Tex. 1993).[3]

2. A state court of last resort has not decided an important question of federal law that conflicts with any other decision. This Court has made it clear that state law controls property rights in bankruptcy proceedings. *Barnhill vs. Johnson*, 503 U.S. 393 (1992); *Butner vs. U.S.*, 440 U.S. 48 (1979).

3. Neither a state court nor a federal court of appeals has decided contrary to Respondent's position in bankruptcy courts.

B. Petitioner's case has been fully decided below and affirmed by two appellate courts.

C. Petitioner's argument is without merit even if it is appropriate. *Drye vs. U.S.*, 528 U.S. 49 (1999) was decided based on tax law and tax exemptions where a federal tax lien has been filed.

D. The issues involved in this petition for writ of certiorari do not warrant review.

E. Petitioner is attempting to legislate a change to the bankruptcy code without presenting the matter before Congress.

F. Petitioner cannot state with confidence that a reversal of this Court's prior decisions would have little effect on others.

G. The allegedly conflicting decisions are clearly distinguishable on their facts and the law applied.

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[3] On occasion, Petitioner uses the term "disapproved of" instead of "reversed."

H. The issues raised by Petitioner are not the same as the issues were not raised in the lower courts.

I. The decision below follows an unbroken line of authorities in Respondents favor.

J. The Fifth Circuit Court of Appeals reached a permissive result.

K. The two major conflicting opinions relied on by the parties are distinguishable.

L. The Fifth Circuit Court of Appeals is presumed to be experts on the statutes of Louisiana, Mississippi, and Texas laws.

M. This Court rarely takes a case to reaffirm settled law.

N. The decision reached by the Fifth Circuit Court of Appeals is not in a state of flux and requires no further time to "percolate" in the lower courts.

O. National uniformity is not essential in the context of the Petitioner's position.

P. This is not a proper test case for the issue presented below.

Q. This case was decided on independent state court grounds.

R. Judgment below decided on independent state law.

S. The Fifth Circuit Court of Appeals' judgment is based on a separate and independent constitutional grounds than those asserted by the Petitioner.

T. Any judgment of this Court reversing the Fifth Circuit Court of Appeals will not have an immediate and important affect far beyond the parties to this case.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Supreme Court deny the petition for writ of certiorari.

Respectfully submitted,

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